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## NOTES ON MUNICIPAL GOVERNMENT.

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**New York.**—*Civil Service.* The decision of the New York Court of Appeals interpreting the constitutional provision requiring competitive examinations wherever practicable for all positions to the civil service, state and local, must be regarded as a severe setback to the advancement of civil service reform. In reversing the decision of the Supreme Court and the unanimous decision of the Appellate Division, the Court of Appeals has laid itself open to much criticism. The case in question, arose through a suit brought by Simeon B. Chittenden and other citizens of Brooklyn against the mayor, comptroller and other fiscal officers, to restrain payment of salary to certain employes who had been appointed since the first of January, 1895. The plaintiffs contended that these positions came within the constitutional rule requiring competitive examinations.

Justice Keogh of the Supreme Court decided in favor of the plaintiffs. An appeal was taken to the Appellate Division, in which the opinion of the lower court was unanimously sustained. The decision of these two lower courts is of special interest, owing to the fact that for the first time a constitutional provision was declared to be self-executory, even in the absence of legislative enactments providing for its enforcement. "The Constitution," the court said, "is the basic and fundamental law. To this ultimate and supreme mandate of the people, declared by its delegates in convention assembled, it is the duty of all departments of the state government, executive, legislative and judicial, to bow instant obedience. It is our duty to interpret it reasonably and firmly in the questions involved in this appeal." The court goes on to cite with approval an opinion of Judge O'Brien:\* "If the legislature should repeal all the statutes and regulations on the subject of appointments in the civil service, the mandate of the Constitution would still remain and would so far execute itself as to require the courts, in a proper case, to pronounce appointments made without compliance with its requirements illegal." In its conclusion, the court states that the evidence proves that the positions under consideration were such that appointments to the same could be made on the basis of competitive examinations, and that the action of the mayor

\* *People vs. Roberts*, 13 Miscellaneous Reports, New York, 448, 91 Hunter, 101; 148 New York, 360.

of Brooklyn "in placing such positions in the non-competitive class and requiring them to be filled therefrom without competitive examination, is illegal and as such is subject to review by this court."

The Court of Appeals in reversing the decision of the lower court takes the ground that the clause in the Constitution which requires that appointments and promotions "shall be made according to merit and fitness to be ascertained so far as practicable by examinations which, so far as practicable, shall be competitive," excludes positions of a confidential nature from the rule. The court, however, refuses to lay down any rules of distinction between confidential and non-confidential positions; that such classification must be determined either by statute or through the regulation of persons entrusted with the execution of such statute. In this case the duty of classification devolved upon the mayor of the city of Brooklyn, and in the absence of any evidence of corruption or dishonesty must be regarded as final. "It is not pretended," says the court, "that the mayor was corrupt, dishonest, or that he was actuated by improper motives in making the classification. The duty devolved upon him under the statute;\* and, until the contrary appears, we must presume that he acted conscientiously and upon his best judgment. Such a classification is not void; it may be voidable, for his action is subject to review; but until it is judicially determined that his classification was erroneous, it is a protection to subordinates and employes acting thereunder."

The eleven offices which were in question in this case were subordinate places in the finance department. The act of 1883 specifically excepted from the civil service rules those officials for whose action a superior is responsible; those holding confidential positions, and employes of educational departments. These excepted positions the court has maintained. The decision of the Appellate Department of the Supreme Court, in declaring the constitutional clause self-executory, is impliedly reversed by the Court of Appeals in these terms: "The duty rests upon the legislature and the courts to enforce the civil service provisions of the Constitution in their letter and spirit. We doubt not that at an early date the legislature will supplement the existing civil service laws by such additional enactments as will cover all the civil divisions of the state, including villages, and furnishing a complete system for carrying out the mandates of the Constitution." This means that the application of the competitive examination system is a matter for the legislature

\*That is under the civil service law enacted prior to the adoption of the constitutional amendment.

to provide, and that until such an act is passed, the constitutional clause represents a declaration of principle rather than a self-executory enactment.

*New York City Citizens' Union.\** At a recent meeting of the "committee of organization," which is the large central body of the Citizens' Union, it was decided that the Union should be organized as a permanent municipal party. A committee to report a plan for permanent organization was appointed. The general sentiment among those who were active either in the general work of the Union or in the work in assembly districts is, that organized work should be begun immediately in preparation for the next municipal election. While all the candidates of the Union for the principal offices were defeated, five or six of its candidates for the state assembly, and four or five of its candidates for the board of aldermen, were elected. In some cases the result is still in doubt; and two or three of the Union's candidates have carried their contests into the courts. These contests have shown, in a striking manner, the many serious defects in the election law, imposed upon the voters of the state by the Republican machine in 1895. It is of great importance that this law should be simplified and improved in many points before the next municipal election. The facts developed in these contests and the reports of the watchers who represented the Union at the polling places on election day, indicate that, while Tammany had a large plurality of the votes cast, the difference between the vote for Low and the vote for Van Wyck was not as great, by perhaps thirty thousand, as the difference shown on the official returns. Evidently a law under which this is possible would constitute a grave danger in the event of a very close election.

**Brooklyn.—Street Railways.** A recent decision of the Court of Appeals of New York has thrown consternation into local railway circles. It has been the practice of the railway companies to lease or rent these privileges, or a portion of them, to other companies. So far as railway connections are concerned, the state law specifies that roads may be allowed to make connections between two adjoining divisions for a distance of 1000 feet over the track of another company on payment of rental. The new constitution, however, provides in Section XVIII, Article 3, that "No law shall authorize the construction or operation of a street railroad, except upon the condition that the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having the control of that portion of a street or highway upon

\* Communication of James W. Pryor, Esq.

which it is proposed to construct and operate such road, be first obtained." Construing this section of the Constitution, the Court of Appeals holds that a franchise granted to one company, which has complied with all the formalities, does not permit it to grant any privileges along its line to any other company. "When the municipal authorities," says the court, "consented that the respondent might operate its road through Broadway, they do not consent that any company might operate a distinct and separate road through that street. It is not the laying of the tracks but the running of cars that constitutes the chief burden both upon the street and the property of the abutting owners. Consent to the burden of one road should, in reason, be limited to that road, with whatever increase of business it may have; but it should not be extended to as many roads as can crowd their cars into operation on that street. It would be an unreasonable construction to hold that this is what the public authorities or the private citizens intend when they consent to the building and operation of a street railroad. Instead of an advantage to the public or to those owning property on the street, which is the inducement to obtain consent, it might result in an unexpected burden upon both, without any power to prevent it, and yet with no intention to consent to it. . . . We think that when consent is given, either in behalf of the public or the abutting owners, to one company, it is for its own use and not for the use of an indefinite number of other companies, regardless of the interests of the city or of the owners of the property on the street."

The full bearing of this decision upon the operations of the various companies is at present difficult to foresee. Unless some arrangement can be made by which the formalities prescribed by the court can be complied with, it is probable that the only satisfactory solution will be in consolidation. A movement for consolidation of the four great trolley companies was begun some years ago, but failed of success. It is probable, however, that under the pressure of the present decision another effort will be made.

*Gas Works.* The Brooklyn Municipal Club, an organization composed of a number of leading citizens of that city, has just published its first bulletin dealing with corporate rights and the public, and private ownership and operation of gas plants. In this publication special attention is given to the recent lease of the Philadelphia gas works to a private corporation. The consolidation of the different Brooklyn gas companies is also described. After a period of competition between various companies, the usual result was reached, viz., that of agreement, upon which consolidation soon

followed. In November, 1895, the plan of union was formally approved by the stockholders of the seven larger companies. The details of consolidation are well described in the bulletin in the following terms: "In September of the present year the Brooklyn Union Gas Company was organized for the purpose of buying out the old companies and controlling the entire business of the city. It was to have a capital of \$15,000,000 and was to issue bonds to the same amount. The capital stock of the seven independent companies was only \$10,220,000, and their bonded debt but \$3,282,000. Of the old companies the Brooklyn had a capital of \$2,000,000; the Metropolitan, a capital of \$870,000; the Fulton-Municipal, a capital of \$2,100,000; the Citizens', a capital of \$2,000,000; the Williamsburgh, a capital of \$1,000,000; the Nassau, a capital of \$1,250,000, and the People's, a capital of \$1,000,000. The holders of the stock in these companies were to receive \$14,213,077 of the Brooklyn Union stock in return for the \$10,220,000 in stock which they held, and in addition they were to receive bonds of the new company to the amount of \$10,120,245. The remainder of the issue of \$15,000,000 was to be used in taking up the bonds of the old companies to the amount of \$3,282,000 and for other purposes, and it is believed that the difference between the stock given to the old stockholders and the total issue was given as commissions to the men who engineered the scheme. The total obligations of the old companies in the way of stock and bonds were \$13,502,000. The total obligations of the new company which has absorbed the old ones are \$30,000,000."

It is a significant fact that even with this inflated valuation the company is able to earn large profits. At the present time the stock is selling between 123 and 127, and this in spite of the fact that under the new Wray law the company has contracted with the city to reduce the price five cents each year until it reaches one dollar. The present price is \$1.20 per thousand cubic feet.

**Philadelphia.**—*Gas Lease.* In spite of the vigorous opposition of the various reform organizations the ordinance accepting the terms of the United Gas Improvement Company's lease has been passed by both branches of councils and approved by the mayor. The signing of the contract was postponed in order to give the organizations, and individuals opposed to the lease, an opportunity to test its validity in the courts. Bills of equity were filed by two of the competing companies, as well as a certain number of citizens interested as taxpayers, to prevent the consummation of the lease.

The petitioners claimed that the leasing of the gas works is an attempt by the city of Philadelphia to grant to the United Gas

Improvement Company an exclusive privilege within the territorial limits of the city, and, therefore, unconstitutional; that it is, furthermore, an attempt by the said city to bargain away the right of subsequent councils of the city to pass ordinances touching matters which may be required for the well being of its citizens; that in agreeing to this lease the city is, in effect, contracting not to exercise its police power. Furthermore, that the charter of the city vests the control of the gas works in the executive department, and that the lease is, therefore, contrary to the provisions of the charter and that it works a transfer of the possession of the gas works to a private corporation. Finally one of the holders of gas works bonds maintained that in parting with the works, one of the conditions of the contract for the payment of the bonds was being violated.

The decision of the court rendered on November 30, refusing to grant a preliminary injunction, holds that the matter of leasing the gas works is under the control of councils and is not a question for the court to consider. "The duties of councils in this matter are deliberative and discretionary, and their decision is not subject to the revision of the court. The manufacture of gas is not a municipal duty, but a power merely. Being therefore a power merely and not a duty, the means of exercising the power must of necessity be left to the discretion of the legislative body." Furthermore, "the maxim of the law that a delegated power cannot be delegated has no application in this case. The Philadelphia gas works is not a department of the city government. It is the private business of the City of Philadelphia and not the business of the legislature which chartered the city; hence, there is no delegation of a governmental power imposed by the legislature on the city, but merely a choice of the means of carrying on a business. The truth really is, that, having the power it has a right to select the means of exercising the power and may do so either by manufacturing and furnishing gas by its own employes, or by means of a private corporation chartered for that purpose." The court furthermore considers the objection that was raised that in parting with the gas works the city was impairing the guarantee of bondholders of the gas works. The court admits the requirement of a sinking fund for the payment of the bonds, but denies that the receipts from the gas works "were impressed with any trust so far as the collection and custody of them were concerned." The receipts from the gas works were not kept separate from other receipts of the city, and, therefore, do not become impressed with any trust or pledge until appropriation is made for this specific purpose by councils.

Immediately after the decision the mayor closed the contract with the company, which then took charge of the financial management of the works. The entire plant will be handed over on the first of January. It is probable however that the contest will be carried to the Supreme Court of the state.

*Citizens' Union.* The influence of the independent movement in New York City has already begun to make itself felt in the large cities of the United States. The most recent manifestation of this tendency is shown in the organization of an independent Citizens' Union in Philadelphia. This Union is composed of men of all shades of political opinion for the purpose of securing the nomination and election of a mayor and city officials whose only claim to office shall be fitness to fulfill the duties of the same. The Union has already effected a permanent organization upon a liberal basis, inviting people of all classes and shades of opinion to co-operate. The principles of the Union have been embodied in a platform of which the following is a summary :

First.—That civil service provisions be strictly enforced.

Second.—That the city retain the ownership and absolute control of all natural monopolies, and that no leases of city property and franchises shall be granted except for short periods.

Third.—That all contracts for municipal work be impartially awarded.

Fourth.—That a higher standard be enforced in the performance of municipal services.

Fifth.—That the election laws be revised.

Sixth.—That to attain these ends citizens must be willing to consider municipal questions and candidates on their own merits.

**Boston.\*—Unicameral City Legislature.** The referendum on the act of the General Court amending the city charter by substituting a unicameral city council for the present bicameral body resulted in the rejection of the measure by an adverse majority of more than 7000 votes. About 7000 of the voters who cast their ballot for governor did not vote on this question. Municipal reformers were divided as to the expediency of the measure. Although the change was advocated by the Municipal League, there was a difference of opinion on the question among the members of that organization.

*Street Railway Consolidation.*—The great scheme for municipal transit, making a combination of the proposed elevated railway system and the present surface system operated by the West End

\*Communication of Sylvester Baxter, Esq.



Street Railway Company, for which elaborate preparations have been in hand for several months, has been brought to a sudden and unexpected halt by the refusal of the Railroad Commission to approve the terms of the lease of the West End Company to the Boston Elevated Railroad Company. The two corporations are substantially identical, so that the lease, in effect, was a bargain of certain individuals, acting in one capacity, made with themselves acting in another capacity. The lease was disapproved on the ground that it was adverse to public interests, particularly in the guarantee of an 8 per cent annual dividend on the West End common stock and in making the lease for a term of ninety-nine years. The document in which the views of the commission were set forth at length is a strikingly strong and able one and the position taken is backed by a strong public sentiment. The feeling in favor of public ownership and operation of municipal transit services has become strong in this community.

Should the disapproval of the West End lease result in permanently blocking the plans for the proposed transit system—that is, in case the promoters of the project should not be able to gain their wishes from the General Court of 1898 and secure desired amendments to the law—the Boston Transit Commission, which is constructing the new subway and the new bridge across the Charles River between the city proper and Charlestown, is authorized to build for the city an elevated railway line between the southerly terminus of the subway and Franklin Park. After meeting the cost of the subway construction, which comes well within the original estimates there will be something like \$2,000,000 available for this purpose.

Two divisions of the new subway are now in successful operation. It more than meets public expectations. It is clean, comfortable, light and well ventilated. Local transit has been greatly expedited and the congestion of the streets that existed for years has disappeared. Much inconvenience was experienced for some weeks in consequence of the retention on the surface of several important lines that properly belonged in the subway. There was a feeling that this was a move on the part of the street-railway company to retain possession of the surface tracks whose removal had been directed by law as soon as the entire subway should be completed. The Transit Commission, however, ordered the company to remove a turnout at the Granary Burying-Ground terminal, and this speedily remedied the trouble, for it compelled the transfer of the lines in question to the subway. The entire subway system will be ready for traffic next summer.

*Public Baths.*—The novel experiment tried at Revere Beach by the Metropolitan Park Commission, in the operation of a great oceanside bathing establishment, has met with complete success. A large bath-house of a handsome architectural design was erected by the commission last summer. It contains a thousand dressing-rooms together with accommodations for checking a very large number of bicycles. Instead of leasing the concession the commission undertook the direct operation of the establishment. First-class bathing-suits of a uniform pattern are supplied and elaborate means for washing and drying these were adopted. The charge for the use of the dressing-rooms, together with bathing-suit and towel, was first set at twenty-five cents, the same charge previously made by private individuals for very inferior accommodations. There was a strong objection made to this rate, however, and the fee was reduced to fifteen cents. The bath-house was opened on August 1, and closed on September 19. During that period the number of bathers was 62,175; the receipts were a little more than \$10,000, and the expenses were a few hundred dollars over that figure.

*Parks.* Another great metropolitan park improvement, the beautiful Mystic Valley Parkway, was opened to the public in September. The parkway runs from the centre of Winchester to Medford, on the northeasterly shores of the Mystic lakes. Its extension to connect with other portions of the metropolitan and municipal park systems is proposed.

*Water Supply.* The new metropolitan water system for Greater Boston will begin operation on January 1, 1898, the date fixed upon when the plans were first made. This system brings the water of the Nashua River to reinforce the present supplies of the various municipalities of Greater Boston, which are to come into the possession of the Metropolitan Water Board on January 1. The new system will not be completed for several years to come, but the supply now available will be adequate to the needs of the metropolitan water district for the near future.

*Town Government.* The suburb of Melrose, having grown well past the limit of 12,000 inhabitants required for a city in Massachusetts, has been considering the question of changing its form of government and applying for a city charter. At a special election lately held, there was a decided majority in favor of retaining the town government. There appears to be a growing reluctance to give up the pure democracy of the town form, with its complete referendum and initiative privileges. Brookline still retains its town government and finds it not at all inconvenient.

**Buffalo.**—*Gas Works.*\* A new gas company has been lately incorporated at Albany with a capital of \$7,000,000, which is intended to absorb the three companies now existing—the Citizens', the Buffalo and the Queen City. It has acquired all the stock of the first named, and there is no doubt that the other two will speedily go the same way. The new corporation, it is said, will at once issue bonds to an amount equal to its capital stock, and the public will have to pay both interest on the one and dividends on the other. Under these circumstances it seems vain to expect either an improvement in the quality of gas or a reduction in price, unless the city undertakes the business itself. It is said that the entire existing gas-plant could be duplicated for not more than \$3,500,000. This gives fresh interest to the subject of municipal ownership of natural monopolies.

*Non-Partisanship in Municipal Elections.* Considerable progress toward non-partisanship in municipal government has been made during the last few years. The recent election was the first since the new state constitution took effect in which no state or national issues were at stake, and the most frantic appeals from the press to vote on national party lines were disregarded by the voters. The influence of the Good Government Clubs was very apparent in the results, the candidates on both regular tickets approved, were elected with few exceptions.

At present there is considerable public interest in the subject of direct nominations by the people, without the intervention of caucuses and conventions. A candidate nominated in this way for a ward office in one of the wards was successful—though the fact that he received in addition the nomination of one of the regular parties, may account for his election.

**Pottsville.**†—*Taxpayers' Association of Schuylkill County.* The work of this association has been done heretofore in the line of road and school tax. As regards roads, under the law known as the Losch Road Bill separate taxpayers may petition court for right to make roads in townships, provided other taxpayers join in the payment. The officials elected by townships are paid their fixed salaries, *i. e.*, the supervisor, auditor's clerk, solicitor. The balance of money is spent on the roads, accounts audited annually, and consequently no money is allowed to be wasted, thus reducing the road taxes sometimes as much as fifty per cent. This was made necessary by the

\* Communication of A. L. Richardson, Esq.

† As an instance of the increasingly important role of voluntary organizations in maintaining control over public officials, the experience of the Schuylkill County Taxpayers Association seems particularly valuable. We print the communication of its executive officer William L. Sheaffer, Esq.

extravagant, loose, and illegal methods adopted by officials over whom there was no control, except in the final audit.

In *school* affairs, the accounts are now audited every month and illegal matters exposed. Up to the present time four township school boards have been brought to trial for illegal practices. Among these abuses may be mentioned assessments on teachers, sales of books and supplies at outrageous figures, directors interested in contracts, etc. This has tended to reduce the school tax.

Heretofore the county tax, which covers also the almshouse and prison accounts has been left without any examination, further than that made by a board of auditors, which was usually merely formal and which at present the controller is supposed to do. The continual increase in expense in all accounts, the increase in salaries and number of people employed to do the work, and a consequent increase in tax rates for county purposes finally led to an examination of the ways of transacting business in county affairs. This led to the formation of a Committee of Seven who have the county and poor accounts under their charge, and the past six months or more have been spent in this work. They have only examined the County Commissioners' and Controller's offices and have found evidences of fraud in connection with several public works such as the jail and almshouse improvements. Criminal proceeding for conspiracy have been brought against the County Commissioners, Controller, and Commissioners' clerk.

In addition to this work, they have examined the list of recipients of outdoor relief, comprising some eleven hundred names, receiving between \$45,000 and \$50,000 annually from the county. In this list over three hundred and twenty-five persons were reported as owning property, working, dead, removed, etc. To-day's list is less than seven hundred and fifty, a saving of over \$17,500 a year. They are now examining the indoor poor-house accounts and find the same extravagance and lack of business methods. This gives an idea of the work. It seems to be endless but it must result in a great reduction of expense.